

APPEAL NO. 022360
FILED OCTOBER 28, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 14, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th and 12th quarters. The claimant appealed and the respondent (carrier) responded.

DECISION

As reformed herein, the hearing officer's decision is affirmed.

We reform the hearing officer's decision as follows:

1. The CCH was held on August 14, 2002 (not August 13, 2002).
2. Stipulation 1.H. The parties stipulated that the qualifying period for the 11th quarter was from July 1, 2001 (not July 1, 2002), through September 29, 2001.
3. Stipulation 1.J. The parties stipulated that the qualifying period for the 12th quarter was from September 30, 2001, through December 29, 2001 (not December 2, 2001).
4. Finding of Fact No. 7. The claimant began his part-time work on October 24, 2001 (not September 30, 2001).

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the 11th and 12th quarters. Conflicting evidence was presented with regard to the claimant's ability to work. The hearing officer determined that the claimant had an ability to work in a sedentary capacity during the qualifying periods for the 11th and 12th quarters, that he was not limited to part-time work, and that he did not make a good faith effort to obtain employment commensurate with his ability to work during those qualifying periods. Consequently, the hearing officer concluded that the claimant is not entitled to SIBs for the 11th and 12th quarters. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although the treating doctor reported and testified that the claimant had no ability to work, there was a report from another doctor who examined the claimant that reflected that the claimant could work in the light-duty category. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the

great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order, as reformed herein, is affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge